

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**NANCY WEBB on behalf of herself and
all others similarly situated,**

Plaintiff,

v.

**OASIS GOODTIME EMPORIUM I,
INC. and BARBARA HOLCOMB,**

Defendants.

**CIVIL ACTION NO.:
1:13-cv-03524-ELR**

**DEFENDANT OASIS GOODTIME EMPORIUM, INC.’S
MEMORANDUM IN SUPPORT OF ITS MOTION TO COMPEL
DISCOVERY RESPONSES FROM PLAINTIFFS**

Defendant Oasis Goodtime Emporium, Inc. (“Oasis”) submits the following memorandum in support of its motion to compel discovery filed contemporaneously herewith.

I. BACKGROUND

Oasis served its First Interrogatories To Plaintiffs and its First Request for Production of Documents To Plaintiffs on October 9, 2015. [Docs. No. 45, 46 and Exhibit 1] Plaintiffs have failed to timely respond to Oasis’s discovery requests. Plaintiffs were granted a short extension of time to respond to December 2015. In spite of multiple requests by Oasis’s counsel to Plaintiffs’ counsel Anthony

Collins, no responses have been served. For the convenience of the Court, copies of Defendant's discovery requests are attached as Exhibits 2 (Interrogatories) and 3 (Request for Production). The discovery requests were identical to each Plaintiff.

II. FACTS

Oasis's discovery requests are attached hereto as Exhibits 2 and 3. Plaintiffs have neither responded nor objected to the discovery requests.

III. ARGUMENT AND CITATION OF AUTHORITY

By failing to respond on a timely basis to Oasis's discovery requests, Plaintiffs have waived their right to object to those discovery requests. Plaintiffs' failure to cooperate in discovery has prejudiced Oasis. Without adequate discovery, Oasis cannot defend this lawsuit. Moreover, Oasis has incurred legal fees and costs in its attempts to secure Plaintiffs' cooperation in discovery.

This Court has great latitude to grant sanctions for a party's failure to cooperate in discovery, and it is within the Court's discretion to award sanctions up to, and including, dismissal. See Fed. R. Civ. P. 37; Phipps v. Blakeney, 8 F.3d 788 (11th Cir. 1993); Textron Fin. Corp. v. RV Having Fun Yet, Inc., 2010 U.S. Dist. LEXIS 25917 (M.D. Fla. Mar. 19, 2010).

Oasis now asks this Court for an order compelling Plaintiffs to respond to Oasis's discovery requests to Plaintiffs, and precluding Plaintiffs from asserting any objections.

Federal Rule of Civil Procedure 33 states: "The grounds for objecting to any interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure." Fed. R. Civ. P. 33(b)(4) (emphasis added). "Rule 34 contains a similar requirement that objections to requests for production be timely and stated with reasons, and the Advisory Committee Notes to the 1970 Amendment state that this subdivision 'is essentially the same as that in Rule 33. . . .'" Bailey Indus. v. CLJP, Inc., 270 F.R.D. 662, 668, 2010 U.S. Dist. LEXIS 108219 *13 (N.D. Fla. Sept. 30, 2010). "Thus, as a general rule, when a party fails to timely object to interrogatories, production requests, or other discovery efforts, the objections are deemed waived." Id., (citing In re United States, 864 F.2d 1153, 1156 (5th Cir. 1989)). This rule applies even when a party has a legitimate objection to make. See Jaffe v. Grant, 793 F.2d 1182, 1190 n.6 (11th Cir. 1986) (objection based on Fifth Amendment waived by failure to timely assert such privilege in response to discovery); Peat, Marwick, Mitchell & Co. v. West, 748 F.2d 540, 542 (10th Cir. 1984) (same as to work product).

Oasis served its discovery requests on October 9, 2015. [Docs. No. 45, 46 and Exhibit 1] Plaintiffs failed to respond at all. Therefore, pursuant to Rule 33, Plaintiffs have waived their ability to object to Oasis's discovery requests. See Bailey Indus., supra, at *14; Reliance Ins. Co. v. Core Carriers, Inc., 2008 U.S. Dist. LEXIS 53337 *6-7 (M.D. Fla. June 10, 2008); Pitts v. Francis, 2008 U.S. Dist. LEXIS 41894 *11 (N.D. Fla. May 28, 2008).

IV. CONCLUSION

For the foregoing reasons, Oasis requests the Court enter an order (1) compelling Plaintiffs to respond to Oasis's discovery requests, (2) precluding Plaintiffs from objecting to the discovery requests, (3) extending the discovery period for thirty days after Plaintiffs respond to the discovery request and produce the documents requested herein, and (4) awarding Oasis its costs and attorney's fees incurred in filing the instant Motion. In the event the Court grants Oasis's Motion, Oasis requests leave to file material in support of its request for attorney's fees.

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), the undersigned counsel for Defendant certifies that the foregoing has been prepared in Times New Roman font, 14-point

type, which is one of the font and point selections approved by the Court in Local Rule 5.1(B).

/s/ Frederick L. Warren

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on February 5, 2016, he served the foregoing **DEFENDANT OASIS GOODTIME EMPORIUM, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION TO COMPEL DISCOVERY RESPONSES FROM PLAINTIFFS**, with the Clerk of Court using the CM/ECF System which will automatically send e-mail notification of such filing to the following attorneys of record:

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